

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>GALLATIN RIVER COMMUNICATIONS</b>	)	
<b>L.L.C. D/B/A CENTURYLINK</b>	)	
	)	
<b>Petition for Arbitration Pursuant to</b>	)	
<b>Section 252(b) of the Communications Act</b>	)	
<b>of 1934, as amended by the</b>	)	<b>Docket No. 11-0567</b>
<b>Telecommunications Act of 1996</b>	)	
<b>To Establish the Rates, Terms and</b>	)	
<b>Conditions of Interconnection with</b>	)	
<b>NTS Services Corp.</b>	)	

**PROPOSED ORDER**

By the Commission:

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

On August 3, 2011, Gallatin River Communications L.L.C. d/b/a CenturyLink (“CenturyLink”) filed its petition for arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”) to establish rates, terms and conditions of interconnection with NTS Services Corp. (“NTS”). The petition was filed within the 135 to 160 day window provided for in Section 252(b)(1) of the Act. 47 U.S.C. §252(b)(1).

In its petition, CenturyLink requested that the Commission (1) conduct an arbitration of the rates for 2-wire and DS-1 loops, (2) find that CenturyLink’s proposed rates for 2-wire and DS-1 loops are just and reasonable, (3) enter an order adopting the Parties’ agreed-upon terms and conditions and (4) issue an order adopting the Proposed Interconnection Agreement of CenturyLink together with the CenturyLink price list including the rates for 2-wire and DS-1 loops. CenturyLink filed the Direct Testimonies of Guy Miller and Christy Londerholm with its Petition.

On September 23, 2011, NTS filed its response to CenturyLink’s petition. In its response, NTS requested that the Commission carefully review CenturyLink’s cost study and determine the appropriate rates for 2-wire and DS-1 unbundled network element (“UNE”) loops. NTS proposed specific rates for Band 1 2-wire and DS-1 loops and NTS

also requested that the Commission investigate six additional groups of charges in CenturyLink's price list. NTS filed the Direct Testimony of Fred Miri with its response.

On October 3, 2011, CenturyLink moved to strike NTS's request that the Commission investigate six additional groups of charges on the grounds that these charges were not open issues in the negotiations of an interconnection agreement between the parties. NTS filed its response to CenturyLink's motion on October 21, 2011. On November 7, 2011, the ALJ granted CenturyLink's motion to strike.

Pursuant to the schedule established by the ALJ, Staff filed the Direct Testimonies of Dr. James Zolnieriek and Mr. Samuel McClerren on December 16, 2011. CenturyLink filed the Rebuttal Testimonies of Guy Miller and Christy Londerholm on January 20, 2012. The cost study relied upon by CenturyLink in this proceeding was provided as Exhibit 3.2 to the Rebuttal Testimony of Christy Londerholm.

On February 21, 2012, an evidentiary hearing was held to admit the testimonies of the parties. At the conclusion of the hearing, the record was marked "heard and taken."

## **II. UNBUNDLED 2 WIRE LOOP AND DS 1 LOOP**

### **A. Positions of the Parties**

#### **1. CenturyLink**

CenturyLink submitted the direct and rebuttal testimony of Mr. Guy E. Miller, III, Wholesale Staff Director for CenturyLink, and the direct and rebuttal testimony of Ms. Christy V. Londerholm, Director, Regulatory Operations for CenturyLink. Mr. Miller testified concerning the negotiations that took place between CenturyLink and NTS and the federal regulations governing the pricing of unbundled network elements. Ms. Londerholm's testimony described CenturyLink's cost study and the results of that cost study with respect to 2-wire and DS-1 loops. Ms. Londerholm also responded to the criticisms of the cost study levied by NTS and Commission Staff.

Mr. Miller testified that he had participated in the negotiations of an interconnection agreement ("ICA") with NTS since August, 2008. He explained that NTS and CenturyLink's predecessor, Gallatin River Communications L.L.C. ("Gallatin River"), had been party to a two year ICA entered into in August, 2006 (the "2006 ICA"). On August 28, 2008, CenturyLink sent NTS a Notice of termination of the 2006 ICA along with an offer to continue providing services pending negotiations of a new ICA. During the remainder of 2008 and into 2009, the Parties negotiated the terms and conditions of a replacement ICA. Pursuant to its stated terms, the 2006 ICA had an irrevocable final termination date of November, 28, 2009.

Mr. Miller testified that on December 3, 2009, NTS sent a bona fide request (“BFR”) to CenturyLink to permit of a continuance of interconnection services using the terms of CenturyLink’s template ICA. NTS and CenturyLink agreed to use the prices previously negotiated between NTS and Gallatin River prior to CenturyLink’s acquisition of Gallatin River as interim prices, subject to true-up back to November, 2009. Those prices were not based upon a TELRIC cost study undertaken by either CenturyLink or Gallatin River. Pursuant to the parties’ arrangement, and the Federal Communications Commission’s (“FCC”) §51 rules, the terms of the template ICA applied to both parties during the negotiations period. Mr. Miller stated that the negotiations continued during 2010. On December 9, 2010, NTS again formally requested negotiations of the terms and conditions of an ICA. NTS and CenturyLink subsequently stipulated that NTS requested negotiation of an ICA again on February 25, 2011.

Mr. Miller explained that during the negotiations that took place in late 2010 and early 2011, the Parties were able to reach agreement on all of the non-price terms and conditions for the ICA. NTS confirmed in a letter dated April 13, 2011 that only the prices for ten network elements or services remained to be negotiated. During negotiations subsequent to the April 13, 2011 letter, the Parties were able to agree on all of the pricing terms for the ICA except for two unbundled network elements, the 2-wire and DS-1 loop rates.

Mr. Miller testified that Section 252 of the Act sets forth the applicable pricing standards for interconnection and services provided under Section 251(c) of the Act. Section 252(d)(1) of the Act requires the price of a network element to be: (1) based on the cost of providing the network element, (2) nondiscriminatory, and (3) may include a reasonable profit. Mr. Miller explained that the FCC has interpreted this standard to require the pricing of an unbundled network element equal to the sum of the Total Element Long Run Incremental Cost (“TELRIC”) of the network element plus a reasonable allocation of forward-looking common costs.

At hearing, CenturyLink also introduced the direct and rebuttal testimony of Christy V. Londerholm. Ms. Londerholm testified that Centurylink prepared a cost study in conformance with the FCC’s regulations. She indicated that the FCC’s rules require that the rates for unbundled loops be deaveraged into at least three bands. Ms. Londerholm explained that the TELRIC rates produced by CenturyLink’s cost study for Band 1, 2 and 3 2-wire loops were \$26.85, \$52.83 and \$106.72, respectively. The Band 1, 2 and 3 rates for DS-1 loops were determined to be \$121.97, \$282.16 and \$618.79, respectively.

Ms. Londerholm described CenturyLink’s cost study and how it complied with the FCC’s TELRIC requirements. She explained that the FCC’s rules require rates for UNEs to be based on forward-looking economic costs. FCC Rule 47 C.F.R. §51.505 and Commission Rule 790.340 provide that the forward-looking economic cost of a UNE is

the sum of the TELRIC of that UNE, plus a reasonable allocation of forward-looking common costs. Ms. Londerholm explained that the FCC's TELRIC cost rules require a determination of the per unit cost of a UNE based on the total quantity of demand for that UNE, combined with the use of the most efficient telecommunications technology currently available and the lowest cost network configuration or design encompassing the incumbent local exchange carrier's ("ILEC") existing wire centers. She stated that TELRIC methodology develops a unit cost for a total replacement network utilizing current cost of equipment and current construction techniques and costs.

Ms. Londerholm testified that CenturyLink's TELRIC cost study follows the following methodology. First, the study begins with a determination of the forward-looking, most efficient network architecture based on the existing wire center locations and reflects currently available technology that is appropriate and efficient for current and reasonably foreseeable demand levels. Next, the cost study determines the forward-looking installed cost using current vendor material costs and labor rates specific to CenturyLink's serving area. Third, the cost study develops capital and expense costs which reflect the total cost of owning and operating a specific type of assets. They are developed at the FCC account level and include annual cost of depreciation, a return on investment, income taxes, maintenance expenses, network operations expense, and other taxes. Finally, the cost study determines a reasonable contribution to common costs. CenturyLink includes a contribution to common costs in its cost study by calculating a percentage-loading factor which is applied uniformly to all elements of the TELRIC results.

Ms. Londerholm explained that CenturyLink's UNE loop modeling methodology satisfies each aspect of the FCC's TELRIC requirements. The cost study uses company billing records to determine the entire quantity of loops demanded. CenturyLink's network modeling employs a forward-looking, most efficient, least-cost network design. The Loop Module and Loop Summary Module use forward-looking vendor material costs and labor rates specific to CenturyLink to develop the installed costs for all investment required to build a functioning unbundled loop. CenturyLink's modeling for expenses uses a combination of an Annual Charge Factor ("ACF") and Other Direct and Common ("ODC") expenses. The ACF is a factor that converts loop investment amount into an annual recurring cost that includes investment recovery through forward-looking economic depreciation lives, cost of capital, ad valorem taxes and direct maintenance expenses. The ODC is a factor for the direct network operations and support expenses. As a final step, Ms. Londerholm explains the FCC direction to de-average costs into a minimum of three bands. In her direct testimony, Ms. Londerholm provides a summary of the breakdown of each type of cost included in the cost study. In her rebuttal testimony she provided a copy of the cost study itself.

Ms. Londerholm demonstrated the many efficiencies built into the cost study. She explained that each type of equipment in the cost study is designed and sized to a

capacity to achieve efficiency to meet the total demand for services at the locations served by those equipment items. She explained that this introduces a substantial degree of efficiencies that can never be achieved in the embedded network. The modeled efficiency has as its root the perfect 20/20 hindsight regarding exact customer locations, and demand for services at those locations. The scale of engineering and construction job for each cable foot is based on the same modeled assumption of perfect knowledge of customer locations and demand for each specific service at each of those locations. Thus, she stated, CenturyLink's TELRIC methodology and resulting UNE prices reflect numerous forward-looking efficiencies including network designs, least-cost technology, equipment sizing and pricing, optimal cable routing and scale of construction which far exceed that obtainable in the embedded network.

Ms. Londerholm testified that CenturyLink's cost study efficiencies are demonstrated by a comparison to the embedded network. She stated that the modeled network in CenturyLink's cost study had significantly fewer sheath feet than the embedded network. She testified that CenturyLink's cost study results in substantially less investment than the embedded network and that when the embedded network investment is indexed to today's costs, the cost study reflects even greater reductions in investment when compared to the indexed embedded network investment. Ms. Londerholm also explained that the modeled network in CenturyLink's cost study results in significantly less annual network expenses than that which CenturyLink actually experienced in Illinois in 2010.

Ms. Londerholm also compared CenturyLink's cost study results to older rates approved in the past for other carriers in Illinois. She explained that the only comparable carrier was Verizon. AT&T's service territory in Illinois consists largely of urban service territories and is much more dense, and thus lower cost, than CenturyLink's service territory. She noted that Verizon's service territory in Illinois is closest to CenturyLink's service area when comparing the loop density. She stated that when Verizon's Band 1 2-wire loop rate, determined in a Commission proceeding over six years ago based on costs that are even older, is indexed forward to today's costs, the TELRIC Band 1 cost for Verizon would be approximately \$30 per loop. She testified that the costs of material such as copper and placing costs, and decreased loop costs (which decrease economies of scale for loops) have resulted in significant increases in per unit costs since Verizon's TELRIC rates were determined. Ms. Londerholm also compared the CenturyLink Band 1 loop rate to the Band 1 loop rates determined for other comparable exchanges in CenturyLink's service territories in other states. She testified that the Illinois Band 1 loop rate was roughly comparable to the rates for comparable exchanges in other states.

In her testimony, Ms. Londerholm responded to criticisms of CenturyLink's cost study made by NTS witness Fred Miri. She testified that contrary to NTS's assertions, all retail costs have been removed in the cost study in determining UNE loop rates. Concerning Mr. Miri's assertions that the ACFs in CenturyLink's cost study were higher

than he had seen in other cost studies, Ms. Londerholm noted that Mr. Miri had not provided any support on this point or proposed any alternative inputs that could have been used in the cost study to produce different results. She also noted that CenturyLink's cost study maintenance expense was much lower than the existing network's embedded maintenance cost.

Ms. Londerholm observed that Staff's single criticism of CenturyLink's cost study was that the cost study included an input value of 12,000 feet for the cutover from copper to fiber, which according to Staff increased the functionality and cost of the 2-wire loop. In response, Ms. Londerholm testified that the 12,000 foot design by itself does not equate to increased incremental functionality or cost per unit. A shorter copper loop length only has increased functionality and cost once incremental electronics are added to the loop. Absent incremental electronics, there is no increased functionality and cost. Ms. Londerholm testified that in its *Virginia Arbitration Order*, the FCC determined that 12,000 feet is the appropriate copper/fiber breakpoint to be used in TELRIC cost studies. She also noted that the Commission has accepted the 12,000 foot design in both dockets 02-0864 and 00-0812, and that CenturyLink has allocated 25% of the digital loop carriers ("DLC") common equipment away from the 2-wire loop as was done in docket 02-0864. She further testified that the 12,000 foot design meets the FCC's requirement that the cost model cost be of an efficient network configuration. Finally, she explained that there is little difference between the UNE costs for a 12,000 foot design and an 18,000 foot design. Ms. Londerholm stated that when the model is run with an 18,000 foot design and with fewer digital loop carriers, the monthly recurring cost difference in Band 1 is less than \$1 per 2-wire loop.

## **2. NTS**

**[To Be Provided by NTS]**

## **3. Staff**

**[To Be Provided by Staff]**

## **B. Commission Analysis and Conclusion**

This is an interconnection arbitration conducted pursuant to Section 252 of the Act. CenturyLink has petitioned the Commission to arbitrate the rates for 2-wire and DS-1 unbundled loops to be purchased by NTS under the ICA that is to result from this proceeding. CenturyLink's proposed rates are the result of a cost study that CenturyLink prepared pursuant to the FCC's rules. NTS and Staff take issue with certain aspects of CenturyLink's cost study and have proposed alternative rates that are based upon proxies that NTS and Staff contend the Commission can use to make its decision.

CenturyLink has proposed rates for unbundled 2-wire and DS-1 loops that are deaveraged into three bands based on a cost study prepared in accordance with the FCC's regulations. CenturyLink's cost study yields Band 1, 2 and 3 monthly recurring rates for 2-wire loops of \$26.85, \$52.83 and \$106.72, respectively, and for DS-1 loops of \$121.97, \$282.16 and \$618.79, respectively. NTS proposes that the Commission adopt proxy rates for CenturyLink and asserts that CenturyLink's Band 1 2-wire and DS-1 loop rates should be based upon AT&T's loop rates that were set in 2004 and that are applicable in Bartonville, Illinois. According to NTS, CenturyLink's Band 1 2-wire monthly recurring rate should be \$12.50 and its Band 1 DS-1 monthly recurring rate should be \$99. Staff also proposes proxy rates for the 2-wire loop rate. Staff proposes that the Commission should set a Band 1 2-wire monthly recurring rate of \$17.93, the rate set forth in the 2006 ICA. The \$17.93 rate was negotiated by Gallatin River and NTS before CenturyLink acquired the Gallatin River exchanges in Illinois. It was not based on a TELRIC cost study. Staff proposes that the Commission adopt CenturyLink's proposed Band 1 DS-1 monthly recurring rate.

Before discussing the specific proposals of the Parties, it is appropriate to first review the Act's requirements and the FCC's rules concerning the pricing of unbundled network elements. Section 251(c)(3) of the Act requires incumbent local exchange carriers to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are "just, reasonable and nondiscriminatory..." 47 U.S.C. §251(c)(2). Section 252(d)(1)(A) of the Act in turn provides that the just and reasonable rate for network elements "(A) shall be (i) based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit." 47 U.S.C. §252(d)(1).

In the FCC's initial regulations issued after passage of the Act, the FCC determined that an incumbent LEC's rates for unbundled network elements such as 2-wire and DS-1 loops "shall be established, at the election of the state commission (1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§51.505 and 51.511; or (2) Consistent with the proxy ceilings and ranges set forth in §51.513." 47 C.F.R. §51.503(b). Section 51.505 of the FCC's rules provides that "[t]he forward-looking economic cost of an element equals the sum of: (1) The total element long-run incremental cost of an element, as described in paragraph (b); and (2) A reasonable allocation of forward-looking common costs, as described in paragraph (c)." 47 C.F.R. §51.505. Section 51.513 of the FCC's rules was appealed and later vacated by the Eighth Circuit in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), *rev'd in part on other grounds*, *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002). As a result, the FCC's existing regulations only authorize a state commission to set UNE rates based on the FCC's forward-looking economic cost-based pricing methodology.

“Total element long run incremental cost” is a term that goes by the acronym “TELRIC.” Under the FCC’s rules, the TELRIC of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such an element. 47 C.F.R. §51.505(b). TELRIC is measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC’s wire centers. 47 C.F.R. §51.505(b)(1). The FCC’s rules also require that TELRIC be calculated using a forward-looking cost of capital and economic depreciation rates. 47 C.F.R. §51.505(b)(2)&(3).

In this case, CenturyLink presented a TELRIC cost study supporting the rates it proposes in this arbitration proceeding. To develop the TELRIC component of the forward-looking economic cost of 2-wire and DS-1 loops, CenturyLink’s cost model determined the forward-looking, most efficient network architecture and calculated the forward-looking installed cost of UNE loops based on this architecture. The combined use of precise wire center locations and boundaries, geo-coded customer locations, actual road networks and terrain features allows CenturyLink’s TELRIC model to design, engineer and construct the most efficient cable routes possible relative to these inputs and parameters. In addition, equipment items (e.g. Digital Loop Carriers, Cross Connects, Cables and Terminals) are designed and sized to a capacity to achieve efficiency to meet the total demand for services at the locations served by the equipment. In this way, CenturyLink’s cost model satisfies the requirement that TELRIC be based upon the most efficient telecommunications technology currently available and the least cost network configuration given the existing locations of CenturyLink’s wire centers.

Once the forward-looking installed cost is calculated, CenturyLink’s cost model calculates capital and expense costs. The Direct Costs attributable to UNE loops consist of maintenance expenses and other direct network operations and support expenses. Maintenance costs include such things as repairing damaged cable or maintaining digital circuit equipment. Other direct network operations and support expenses include such things as testing functions, circuit engineering and cable pair record maintenance. In accordance with the FCC’s regulations, CenturyLink’s cost model uses a forward-looking cost of capital and forward-looking depreciation rates.

The rates calculated by CenturyLink’s cost study also include a reasonable allocation of forward-looking common costs. Common costs include such costs as accounting and information technology personnel, furniture, office equipment, general purpose computers and corporate operations. CenturyLink’s cost study calculates a common cost factor using the current common costs in Illinois and dividing by Illinois TELRIC annual expenses. This factor is then applied back to the individual TELRIC annual expenses to allow for recovery of common costs in the monthly recurring 2-wire and DS-1 loop rates.

NTS and Staff criticize certain aspects of CenturyLink's cost study. In its testimony, NTS for the most part merely questioned the inputs to CenturyLink's cost study. NTS did not propose alternative inputs to be used in the cost study to produce alternative rates during the course of negotiations or in its testimony. Nor did NTS challenge the design of CenturyLink's cost model. NTS witness Miri opined that the annual charge factors in the cost study are higher than he has seen in other cost studies. However, he did not state that they were incorrect for CenturyLink's rural service territory. Neither NTS nor Staff disputed at hearing that costs are higher in rural exchanges because rural exchanges have lower line densities than urban or suburban exchanges.

NTS also pointed out that a small portion of CenturyLink's airplane costs are included in the cost study. NTS did not dispute that the cost of airplanes is an example of a common cost that is properly allocated to unbundled loops under the FCC's rules. NTS also asserted that retail costs are included in the cost study. However, CenturyLink's cost study removed all retail related expenses in calculating the TELRIC cost for 2-wire and DS 1 loops. Finally, NTS questioned how the cost study handled poles owned by electric utilities. In response, CenturyLink demonstrated that the cost study properly handled pole costs. CenturyLink's cost study reduces investment in poles to account for poles owned by electric utilities. Maintenance cost for poles includes the costs that CenturyLink pays to use other utilities' poles, and maintenance cost is reduced by revenues received from other utilities for use of CenturyLink poles.

Staff challenges a single input to CenturyLink's cost study. Staff contends that it is not appropriate for the cost study to be based on a network design that uses a 12,000 foot breakpoint between copper and fiber. According to Staff, the 12,000 foot breakpoint and the digital loop carriers at the copper/fiber breakpoint make the network modeled in CenturyLink's cost study capable of providing more services than CenturyLink's current network is capable of providing. Specifically, Staff asserts that the 12,000 foot breakpoint makes the loops in the modeled network ubiquitously capable of providing broadband.

The FCC has addressed the use of the 12,000 foot breakpoint between copper and fiber and has held that it is the proper design to be used in a TELRIC cost study. *In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration In the Matter of Petition of AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, 18 FCC Rcd 17722, ¶241 (Rel. August 29, 2003). The FCC's determination on this point is binding on the Commission, just as it was upon CenturyLink for model criteria use. The Commission has approved the use of this design in the two prior UNE proceedings in Illinois. *Illinois Bell Telephone Company Filing to*

*Increase Unbundled Loop and Nonrecurring Rates*, Docket 02-0864, 2004 Ill. PUC LEXIS 339, \*263, 298-99 (Illinois Commerce Commission June 9, 2004); *Verizon North Inc. (f/k/a GTE North Incorporated) and Verizon South Inc. (f/k/a GTE South Incorporated)*, *Petition Seeking Approval of Cost Studies for Unbundled Elements, Avoided Costs and Intrastate Switched Access Services*, Docket 00-0812 (ICC May 3, 2006).

Staff bases its argument that it is not appropriate to use a 12,000 foot copper/fiber breakpoint on the FCC's *Triennial Review Order*. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (Rel. Aug. 21, 2003) ("Triennial Review Order"), vacated in part on other grounds *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004). Staff cites paragraph 669 of the *Triennial Review Order* in which the FCC stated that "TELRIC equates the current market value of the existing network of an incumbent telecommunications provider with the cost the incumbent LEC would incur today *if it built a local network that could provide all the services its current network provides*, to meet reasonably foreseeable demand, using the least-cost, most-efficient technology currently available." Staff contends that the italicized phrase means that the network modeled in a TELRIC cost study cannot be capable of providing more or different services than the existing network provides.

We agree with CenturyLink that Staff's reliance upon the italicized language from the *Triennial Review Order* is misplaced. The italicized phrase that Staff relies upon prescribes a minimum, not a maximum. The network modeled in a TELRIC study must be capable at a minimum of providing all of the services that the existing network provides. The italicized phrase in no way prohibits the modeled network from being capable of providing more services than the existing network provides. TELRIC by definition contemplates a forward looking network. Furthermore, the paragraph after the one relied upon by Staff clarifies that "TELRIC assumes that the value of an incumbent LEC's network is constrained by the most efficient technology available, *even if the incumbent LEC itself does not deploy, or plan to deploy, that technology.*" *Triennial Review Order* at ¶670.

Staff's argument is really an argument that the modeled network must be based somehow on the embedded or existing network. According to Staff, if the existing network does not deploy DLCs at a copper/fiber breakpoint at 12,000 feet, the modeled network cannot do so either. The FCC has rejected this view. In footnote 2020 of the *Triennial Review Order*, the FCC states that "it is appropriate for a TELRIC analysis to consider existing technology that is not currently deployed by an incumbent LEC..." The

FCC's rules also provide that the only attribute of the existing network that must be reflected in a TELRIC cost study is the location of the ILEC's existing wire centers. 47 C.F.R. §51.505(b)(1).

CenturyLink witness Christy Londerholm testified that the network modeled by CenturyLink in its TELRIC cost study is not in fact capable of providing more services than CenturyLink's existing network can provide. The modeled network does not include the incremental electronics that are necessary to enable the provision of broadband and the DLCs in the modeled network are not sized to include the incremental electronics. The added electronics, not the 12,000 foot copper/fiber breakpoint, determines whether the loops are capable of providing broadband. An 18,000 foot copper/fiber breakpoint could just as easily be used to provide broadband if the necessary electronics were added.

Finally, even if we accepted Staff's criticism of the 12,000 foot copper/fiber breakpoint design, it would amount to only a minor and easily changed input in the cost study and the Commission is authorized under federal law to order specific and supportable input changes in its determination. In its testimony, CenturyLink quantified the effect of moving to an 18,000 foot breakpoint design and it was insignificant, amounting to less than \$1 per loop in Zone 1. CenturyLink also quantified the effect of removing what Staff considered to be an excessive number of DLCs from the cost study and the effect was also very small. The Commission recognized that using a 12,000 foot breakpoint had no significant effect on the monthly recurring rate in its decision approving Verizon's loop rates in 2006. *Verizon North Inc. (f/k/a GTE North Incorporated) and Verizon South Inc. (f/k/a GTE South Incorporated), Petition Seeking Approval of Cost Studies for Unbundled Elements, Avoided Costs and Intrastate Switched Access Services*, Docket 00-0812, p. 12 (ICC May 3, 2006).

We find that CenturyLink's cost study complies with the FCC's TELRIC cost study rules and produces rates for 2-wire and DS-1 loops that are just, reasonable and nondiscriminatory. The criticisms levied by NTS and Staff do not call this conclusion into question. This leads us to the proxy proposals presented by NTS and Staff.

Initially, we note that the FCC's existing rules do not authorize the Commission to prescribe unbundled loop rates that are not based on a TELRIC cost study prepared for CenturyLink's exchanges in Illinois. The FCC's regulations promulgated shortly after the Act became law provided that a state commission could at its election establish UNE rates based on the FCC's TELRIC pricing methodology or based upon proxy ceilings and ranges prescribed by the FCC. 47 C.F.R. §51.503(b). However, as stated above, the proxy ceilings and ranges prescribed by the FCC were vacated by the Eighth Circuit. That leaves the FCC's TELRIC pricing rules as the only remaining option.

Under the Act, a state commission may require the petitioning party and the responding party to provide such information as may be necessary for the state commission to reach a decision on the unresolved issues. 47 U.S.C. §252(b)(4)(B). If either party refuses or fails unreasonably to respond on a timely basis to a reasonable request from the state commission, then the state commission may proceed on the basis of the best information available to it from whatever source derived. *Id.* However, this case does not involve a situation in which CenturyLink has failed to provide information required for the Commission to make its decision. CenturyLink has presented a cost study that complies with the FCC's TELRIC requirements as set forth in the FCC's regulations and orders. CenturyLink responded to seven sets of data requests from Staff providing further requested information.

The rate proposed by Staff for the Band 1 2-wire loop is not based on a TELRIC cost study and is not a proxy for what a TELRIC cost study would produce for Band 1. The rates proposed by NTS for Band 1 2-wire and DS-1 loops are based on UNE rates prescribed for AT&T over eight years ago. These rates have not been updated to reflect today's costs. AT&T's service territory is predominantly urban and much more dense than CenturyLink's service territory in Illinois. Consequently, even if the rates had been updated, AT&T rates would not be good proxies for what a TELRIC cost study would produce for CenturyLink's rural service territory. Accordingly, we decline to adopt the proxy proposals presented by NTS and Staff.

### **III. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the record developed so far and being fully advised of the premises, is of the opinion and finds that:

- (1) Gallatin River Communications L.L.C. d/b/a CenturyLink and NTS Services Corp. are telecommunications carriers as defined by the Illinois Public Utilities Act;
- (2) The Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Illinois Public Utilities Act and Sections 251 and 252 of the Telecommunications Act of 1996;
- (3) On August 3, 2011, CenturyLink filed the instant Petition for Arbitration seeking arbitration of the rates for 2-wire and DS-1 unbundled loops;
- (4) The UNE rates proposed by CenturyLink in its Petition (as set forth in the direct testimony of Christy V. Londerholm filed on August 3, 2011) are based on the record in this proceeding and are just and reasonable;
- (5) The recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence in the record and the law and are hereby adopted as findings of fact and law.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the UNE rates proposed by CenturyLink in its Petition (as set forth in the direct testimony of Christy Londerholm filed on August 3, 2011) are based on the record in this proceeding and are just and reasonable and should be incorporated into the interconnection agreement filed with CenturyLink's petition for arbitration.

IT IS FURTHER ORDERED that NTS and CenturyLink are directed to file the interconnection agreement incorporating the rates for 2-wire and DS-1 loops adopted in this order within thirty (30) days after the effective date of this order.

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding and not otherwise disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this \_\_\_\_ day of \_\_\_\_\_, 2012.